



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/170985

PRELIMINARY RECITALS

Pursuant to a petition filed December 28, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 02, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly discontinued Petitioner's FoodShare for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest the discontinuance of his FoodShare benefits effective January 1, 2016. Those benefits were discontinued for an alleged failure to participate in the

FoodShare Employment and Training (FSET) program as an Able-bodied Adult without Dependents (ABAWD) who was required to meet a work requirement.

3. Petitioner renewed his FoodShare benefits on September 2, 2015. That application was approved, the agency determined that Petitioner was not exempt from ABAWD work requirements, and he was assigned to the FSET program.
4. Petitioner signed a document agreeing to participate in assigned FSET activities.

DISCUSSION

Effective July 1, 2014, Wisconsin began the Able-Bodied Adults without Dependents (ABAWD) policy in Kenosha, Racine and Walworth counties. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2*. This will be implemented statewide as of April 1, 2015. *Id.*

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare benefits. *FSH §3.17.1.1*. ABAWDs who are not exempt and who do not meet the work requirement are only allowed to receive 3 full months of time-limited benefits in a 36-month period. *Id.*

A person is considered an ABAWD, if that person is:

- ...
- 18 to 49 years in age*;
- Able to work;
- Not residing in a household with a child under age 18 (regardless of the individual's relationship to the child, whether the child is included in the individual's FS assistance group, or the child's FS eligibility status); and
- Not pregnant.

...
FSH §3.17.1.4.

An ABAWD may be exempt from work requirements if the person:

1. Is determined unfit for employment, which includes someone who is:
 - a. Receiving temporary or permanent disability benefits from the government or a private source;
 - b. Mentally or physically unable to work, as determined by the IM agency;
 - c. Verified as unable to work by a statement from a health care professional or social worker;
2. Is responsible for the care of a child under age 6 or caring for an incapacitated person, either of which live outside the home;
3. Is receiving Unemployment Compensation (UC), or has applied for UC and is complying with UC work requirements;
4. Is regularly participating in an alcohol or other drug addiction (AODA) treatment or rehabilitation program;
5. Is a student of higher education and is otherwise eligible for FS ([3.15.1](#));
6. Is a full-time high school student age 18 or over;
7. Is receiving Transitional FS benefits; or
8. Is meeting the ABAWD work requirement.

FSH §3.17.1.5.

An ABAWD meets the ABAWD work requirement if one of the following applies:

1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
2. Participating and complying with an allowable work program at least 80 hours per month; * [includes FSET]
3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
4. Participating and complying with the requirements of a workfare program.
FSH, §13.17.1.7.

If not exempt from work requirements each FoodShare household member must register for work at the time of application and review. *FSH, §3.16.1.4.* As just noted, a person may meet the work requirement by participating in the FoodShare Employment and Training (FSET) program. *FSH, §3.17.1.17.*

I am declining to reverse this discontinuance of Petitioner's FoodShare. Petitioner was provided with all notices, and those notices were delivered to the address that petitioner provided. Petitioner testified that he was completely unaware of the FSET program until December, 2015, and that he did not regularly retrieve his mail. Unfortunately, this does not constitute good cause for failing to participate in FSET.

Petitioner missed appointments with the FSET program, but did take advantage of his opportunity to complete FSET enrollment in December, 2015. At that enrollment he did agree to participate in FSET but then did not participate further. He testified that he was hospitalized in December, 2015, and is pursuing a Social Security Disability determination. While he indicated medical issues, and I have no reason to doubt the veracity, nothing was verified and the time frame unspecific.

Neither the FSET program nor the economic support agency has had the opportunity to evaluate that claim of a medical exemption. I note that he is free to reapply for FoodShare and as part of that process provide the economic support agency and/or the FSET program with the medical information they need to assess Petitioner's medical exemption claim. *See FSH, §3.17.1.11 as to regaining FoodShare eligibility after exhausting 3 months of time limited benefits.* If that exemption is denied Petitioner may again appeal.

CONCLUSIONS OF LAW

That the agency correctly discontinued Petitioner's FoodShare benefits for failing to meet ABAWD requirements – here FSET participation.

NOW, THEREFORE, it is **ORDERED**

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of February, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 25, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability